

REMARKS

In response to final Office Action dated May 29, 2008, claim 19 has been amended. Therefore, claims 1-3, 8-15, 19, 21-25, and 27-29 remain in the case. The Applicant respectfully requests that this amendment be entered under 37 C.F.R. 1.116 to place the above-referenced application in condition for allowance or, alternatively, in better condition for appeal. In light of the amendments and arguments set forth herein, reexamination and reconsideration of the application are requested.

Allowable Subject Matter

The Applicant gratefully acknowledges and appreciates the allowance of claims 1-3, 8-15, 23-25, and 27-29.

Section 101 Rejections

The Office Action rejected claims 19, 21, and 22 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

The Office Action stated that “[W]ith regards to claims 19 and 21-22, which recite ‘one or more computer-readable storage media having stored thereon computer-readable instructions thereon which, when executed by one or more processors, cause the one or more processors to implement the method’”

The Applicant respectfully disagrees with this characterization of claims 19, 21, and 22. In particular, claim 19d does not recite a “one or more computer-readable storage media having stored thereon computer-readable instructions thereon which, when executed by one or more processors, cause the one or more processors to implement the method”

In reality, Applicant’s amended claim 19 recites a “computer-readable storage medium having stored and encoded thereon a computer program having computer-executable instructions for encoding on a computing device video data having video frames”. Amended independent claim 19 recites a computer-readable storage medium

that has stored and encoded thereon a computer program that is functional descriptive material. Further, amended claim 19 recites structural and functional interrelationships between a computing device and a computer-readable medium encoded with a computer program that permits the computer readable medium's functionality to be realized. This is statutory subject matter.

The MPEPP §2106.01 states that "[D]escriptive material can be characterized as either 'functional descriptive material' or 'nonfunctional descriptive material.'" The MPEP §2106.01 also states that "'functional descriptive material' consists of data structures and computer programs which impart functionality when employed as a computer component" (MPEP §2106.01). Thus, the Applicant believes that amended claim 19 recites functional descriptive material that imparts functionality when it is employed as a computer component.

The MPEP §2106.01 also states that "[W]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." The Applicant has amended claim 19 to recite functional descriptive material that is stored and encoded on a computer-readable medium. Again, this is statutory subject matter.

It should be noted that the Applicant is not claiming a computer program *per se*, but computer-readable medium having stored and encoded thereon a computer program, but that is nevertheless statutory.

Specifically, as stated in the MPEP (see Section 2106 (IV)(B)(1)(a) at Page 2100-13, Rev. 2, May 2004):

"Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the

claim remains statutory irrespective of the fact that a computer program is included in the claim. **The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program."**

Accordingly, the Applicant respectfully submits that amended independent claim 19 is patentable under 35 U.S.C. § 101 based on the amendment to claim 19, and the legal and technical arguments set forth above and below. Moreover, claims 21 and 22 depend from amended independent claim 19, and thus also contain patentable subject matter (MPEP § 2143.03). The Applicant, therefore, respectfully requests reexamination, reconsideration and withdrawal of the rejection of claims 19, 21, and 22 under 35 U.S.C. § 101.

Conclusion

In view of the amendments to claim 19 and the arguments set forth above, the Applicant submits that pending claims 1-3, 8-15, 19, 21-25, and 27-29 are in condition for immediate allowance. The Examiner, therefore, is respectfully requested to withdraw the outstanding rejections of the claims and to pass each of the pending claims of this application to issue.

In an effort to expedite and further the prosecution of the subject application, the Applicant kindly invites the Examiner to telephone the Applicant's attorney at (805) 278-8855 if the Examiner has any comments, questions or concerns, wishes to discuss any aspect of the prosecution of this application, or desires any degree of clarification of this response.

Respectfully submitted,
Dated: July 29, 2008

A handwritten signature in black ink, appearing to be 'CSF', with a long horizontal stroke extending to the right.

Craig S. Fischer
Registration No. 42,535
Attorney for Applicant

LYON & HARR, L.L.P.
300 East Esplanade Drive, Suite 800
Oxnard, CA 93036-1274
Tel: (805) 278-8855
Fax: (805) 278-8064